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2 NOT FOR PUBLICATION

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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 John Gilding, a married man,

10 Plaintiff,

11 vs.

12 John S. Carr; Jerry Johnston and Ellen)  
13 Johnston; Robert Marks and Jane Doe)  
14 Marks; Stephen Palmer and Lori Palmer;)  
15 The National Air Traffic Controllers)  
16 Association, AFL-CIO; John Does I-V and)  
17 Jane Does I-V, inclusive; ABC)  
18 Associations I-V inclusive,

19 Defendants.

No. CV-08-2137-PHX-GMS

**ORDER**

19 Pending before the Court is Defendant National Air Traffic Controllers Association's  
20 ("NATCA") Motion for a Stay of the Court's Remand Order Pending Appeal (Dkt. # 122),  
21 Objection/Response (Dkt. # 124), Joinder (Dkt. # 125), and Reply/Joinder (Dkt. ## 133 and  
22 135) thereto. For the following reasons, the motion is denied.

23 In the Ninth Circuit, the standard for granting a stay on appeal is indistinguishable  
24 from that used to determine whether a preliminary injunction should be granted. *Golden*  
25 *Gate Rest. Ass'n v. City and County of San Francisco*, 512 F.3d 1112, 1115-16 (9th Cir.  
26 2008). Thus, the applicant for a stay must show some combination of irreparable injury to its  
27 interests and the likelihood of success on appeal. If the movant can establish a likelihood that  
28 it will prevail on its appeal, it need only establish "a possibility of irreparable injury" to merit

1 a stay pending appeal. *Id.* at 1115-16 quoting *Lopez v. Heckler*, 713 F.2d 1432, 1435-6 (9th  
2 Cir. 1983). Similarly, however, if the movant can establish that “the balance of hardships  
3 tips sharply in its favor,” it need only demonstrate that its appeal raises “serious legal  
4 questions.” *Id.*

5 In this case, NATCA asserts that the Court’s determination that it lacks subject matter  
6 jurisdiction pursuant to 28 U.S.C. §§ 1447 (c) and (d), raises “serious legal questions.”  
7 While the Court recognizes that reasonable minds might disagree with the basis for the ruling  
8 set forth in its remand order, in the Court’s judgment the question appealed is not sufficiently  
9 close so that it could be characterized as presenting “serious legal questions.”

10 Even assuming, however, that NATCA’s appeal does present “serious legal  
11 questions,” the sliding scale standard set forth in *Golden Gate* still requires NATCA to  
12 establish that “the balance of hardships tips sharply in its favor.” This, NATCA fails to do.  
13 NATCA’s only argument is that “[g]ranting the stay pending appeal will protect all parties  
14 from the hardship of what may well prove to be unnecessary, as well as vexatious and costly  
15 litigation in Arizona Superior Court.” While this may be so, it is equally true that  
16 Defendants’ attempt to remove Plaintiff’s state law claims to federal court may also “prove  
17 to be unnecessary, as well as vexatious and costly litigation in the [federal court system].”  
18 As Plaintiff points out in its Response, Defendants’ attempt to remove his claims to federal  
19 court has already delayed his state court case by more than six months. Further, NATCA’s  
20 argument raises no issues as to how “the balance of hardships tips sharply in [NATCA’s]  
21 favor.” NATCA’s assertions that the stay will work no serious hardship on Plaintiff, even  
22 if true, do not satisfy its obligation under *Golden Gate* to establish that it will suffer  
23 disproportionate hardships if a stay is not granted.

24 Finally, according to the *Golden Gate* test, in considering a stay, the Court must take  
25 into account the question of the public interest. NATCA asserts that proper application of  
26 the CSRA preemption is in the public interest. The Court agrees, but, obviously believes that  
27 it has properly applied CSRA preemption to this case. Thus, NATCA’s “public policy”  
28 argument is not separate from the arguments already made by NATCA.

1 Similarly, Plaintiff asserts that the public policy behind the remand statute does not  
2 favor a stay pending the appeal of a remand because, according to the Supreme Court, the  
3 remand statute “reflects Congress’s longstanding ‘policy of not permitting interruption of the  
4 litigation of the merits of a removed case by prolonged litigation of questions of jurisdiction  
5 of the district court to which the case is removed.’” *Powerex Corp. v. Reliant Energy*  
6 *Services, Inc.*, 551 U.S. 224, 234 (2007). Again, however, this argument merely reasserts  
7 Plaintiff’s position that he is prejudiced by having to finance and endure expensive and time-  
8 consuming federal proceedings prior to the resolution of his state court claims. It then, is  
9 merely a restatement of arguments already considered. Therefore, after having considered  
10 the arguments of the parties,

11 **IT IS HEREBY ORDERED**, denying Defendant NATCA’s Motion For A Stay of  
12 the Court’s Remand Order Pending Appeal (Dkt. # 122).

13 DATED this 19th day of May, 2009.

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16 G. Murray Snow  
United States District Judge  
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